



Montana Legislative Services Division

Legal Services Office

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To: LFC Members  
From: Julie Johnson, LSD Staff Attorney  
Re: SAO Request for Transfer of Appropriation Authority  
Date: January 5, 2024

The State Auditor's Office (SAO) has proposed a supplemental appropriation to transfer FY 2025 fiscal year authority to fiscal year 2024 and have offered a mitigation plan that includes the reduction of claims reimbursement in the Montana Reinsurance Program. The reduction would be proportionate to the "extent necessary to maintain appropriation levels." (Thorvilson letter to OBPP dated December 11, 2023).

The question has been asked whether the proposed reduction would place the State of Montana in a "vulnerable legal position due to possible non-compliance with the Montana Reinsurance Act and federal grant conditions." (Id.)

The statute governing the administration of reinsurance payments under the Montana Reinsurance Program does allow for the proportionate reduction for claims of reimbursement. Specifically, 33-22-1316(2), MCA, provides:

(2) If funds accumulated in the reinsurance program account in the state special revenue fund with respect to a benefit year are expected to be insufficient to pay all program expenses, claims for reimbursement, and other disbursements allocable to that benefit year, all claims for reimbursement allocable to that benefit year must be reduced proportionately to the extent necessary to prevent a deficiency in the funds for that benefit year. Any reduction in claims for reimbursement with respect to a benefit year must apply to all claims that are allocated to that benefit year without regard to when those claims were submitted for reimbursement, and any reduction must be applied to each claim in the same proportion.

(Emphasis added). However, as I understand the issue, there are ample funds in the program account to pay for claims. Appropriation authority, however, is lacking. Therefore, the funds accumulated in the account are sufficient to pay for reimbursement. Given this, it may be a violation of the Montana Reinsurance Act to reduce payments in accordance with 33-22-1316. Next, there is concern that a reduction not only could violate state law, but also the conditions of the federal grant conditions, which could jeopardize federal funding for the program. I lack information on the federal grant conditions to definitively concur or disagree whether a reduction to payments of claims in fiscal year 2025 could violate federal grant conditions. Rather, given the information I have been provided and the statutes governing the Montana Reinsurance

Program, it seems that allowing the transfer of authority, given that ample funds in the state account exist to pay claims in fiscal year 2024 and likely those for 2025, would be in the best interests of all parties.